

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA :
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 : Crim. No. 3:17-cr-289(AWT)
v. :
 :
EDIN RIGOBERTO CRUZ-MARTINEZ :
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RULING ON MOTION TO SUPPRESS

The defendant, Edin Rigoberto Cruz-Martinez ("Cruz-Martinez"), is charged in a one-count indictment with possession with intent to distribute one kilogram or more of heroin in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). Cruz-Martinez has moved to suppress heroin and other evidence seized from his vehicle on December 13, 2017. For the reasons set forth below, the motion to suppress is being denied.

I. FACTS

The court makes the following findings of fact, which it concludes have been proven by a preponderance of the evidence. See United States v. Matlock, 415 U.S. 164, 177 n.14 (1974) ("[T]he controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence."). Three witnesses testified at the suppression hearing: Matthew Kowalczyk, a detective with the Bristol Police Department who is assigned to the Hartford Drug Enforcement

Administration Task Force ("Detective Kowalczyk"); Justin Clachrie, a Connecticut State Trooper ("Trooper Clachrie"); and Christopher Devanney, an officer with the Windsor Locks Police Department who is also assigned to the Hartford Drug Enforcement Administration Task Force ("TFO Devanney").

In December 2017, members of the Hartford Drug Enforcement Administration Task Force (the "Task Force") were notified by the Suffolk County, New York Police Department about a confidential source who had information regarding heroin trafficking in Hartford. The confidential source told law enforcement agents about a heroin supplier known as "El Negro," who was attempting to distribute kilogram quantities of heroin. That supplier was later identified as Cruz-Martinez.

Starting on December 8, 2017, the confidential source began communicating with Cruz-Martinez via WhatsApp at the direction of members of the Task Force. Some of these communications were via text messages over the WhatsApp application, which were read by members of the Task Force. The confidential source asked Cruz-Martinez for a sample of heroin using coded language. Specifically, the confidential source asked for a photo of a car. The text messages were in Spanish, and although Detective Kowalczyk does not speak Spanish, the text messages were read by a member of the Task Force who is fluent in Spanish and translated the messages into English.

Cruz-Martinez and the confidential source arranged to meet on December 9, 2017 at a restaurant on Franklin Avenue in Hartford. On that day, members of the Task Force conducted a controlled buy using the confidential source. Before the confidential source met with Cruz-Martinez, members of the Task Force met with him/her to give him/her instructions, search his/her car and person to make sure he/she had no contraband, and equip him/her with a transmitting and recording device.

Task Force members had set up surveillance in the area of the restaurant, and they observed Cruz-Martinez arrive at the restaurant in a Chevy S-10 pickup truck. The confidential source met with Cruz-Martinez inside the restaurant. After engaging in small talk, the confidential source told Cruz-Martinez that he/she was in contact with an individual who wished to buy six kilograms of heroin. In response, Cruz-Martinez quoted a price of \$55,000 per kilogram of heroin. After a brief meeting in the restaurant, the confidential source and Cruz-Martinez left the restaurant, and investigators observed them walk towards Cruz-Martinez's Chevy S-10 pickup truck. One of the investigators observed Cruz-Martinez open the driver's side door of the truck and reach inside the truck. Moments later, the investigator observed Cruz-Martinez hand something to the confidential source; it was later identified as a soda can that contained a one-gram sample of heroin. The confidential source told Cruz-

Martinez that the confidential source would give the sample to the prospective buyer and would be in touch with Cruz-Martinez. Then Cruz-Martinez got into the Chevy S-10 pickup truck and drove to Interstate 91. Members of the Task Force field-tested the sample and it tested positive for heroin.

The Task Force obtained an order for a pen register and a ping order for the cell phone used by Cruz-Martinez. Investigators monitored the ping and observed Cruz-Martinez in Rhode Island during the nighttime hours on December 12, 2017. It appeared Cruz-Martinez was staying in Rhode Island.

On December 13, 2017, members of the Task Force went to Warwick, Rhode Island to conduct surveillance. They observed Cruz-Martinez get into a Honda CR-V with family members and drive away from a hotel. Investigators tracked him to a restaurant. At that point, a member of the Task Force instructed the confidential source to call Cruz-Martinez to say that he/she wanted to do the six-kilogram transaction that day. Cruz-Martinez advised the confidential source that he only had access to two kilograms at that time. Task Force members instructed the confidential source to tell Cruz-Martinez that he/she would talk to the people he/she was representing and then let Cruz-Martinez know if two kilograms of heroin instead of six would be acceptable. Investigators followed Cruz-Martinez as he left the restaurant, dropped family members at the hotel, and then went

to a location where Cruz-Martinez entered the same Chevy S-10 pickup truck Task Force members had observed during the controlled buy on December 9, 2017.

Investigators observed Cruz-Martinez enter the pickup truck with an unknown individual, after which the two of them drove around and then returned to the original location. When the pickup truck returned to the original location, the Task Force had set up surveillance in the area and the confidential source was instructed to call Cruz-Martinez to say that two kilograms was acceptable to the prospective buyers. The confidential source also enquired about when the other four kilograms would be available. The confidential source was told that he/she would have to wait until Saturday.

The confidential source informed the Task Force members that Cruz-Martinez had agreed to bring the two kilograms of heroin to the same restaurant on Franklin Avenue in Hartford where the controlled buy had taken place, and also informed them that Cruz-Martinez indicated that he was probably one-and-a-half hours away from the restaurant. At that time, Task Force members were surveilling Cruz-Martinez in Providence, Rhode Island, and were approximately one-and-a-half hours away from Hartford. They concluded that Cruz-Martinez's departure from that area for the purpose of conducting the two-kilogram transaction was imminent.

Shortly after Cruz-Martinez's call with the confidential source, Detective Kowalczyk observed Cruz-Martinez exit an alleyway carrying a black plastic garbage bag and watched as Cruz-Martinez stepped up into the bed of the Chevy S-10 pickup truck and began to stuff the garbage bag down onto the bed of the truck underneath items that were already in the bed. Cruz-Martinez then got into the truck and drove away.

Task Force members followed Cruz-Martinez in the Chevy S-10 pickup truck as he drove from Providence to Interstate 95 and into Connecticut, consistent with traveling to Hartford. Members of the Task Force contacted the Connecticut State Police and arranged for a marked cruiser to stop the pickup truck. The objective was to protect the confidential source by making it appear that the stop was based on a motor-vehicle violation.

Trooper Clachrie was patrolling in a marked cruiser and was given a description of Cruz-Martinez's vehicle. He and Trooper Chivers were asked to follow Cruz-Martinez's vehicle and stop it if they observed a motor-vehicle violation. While following Cruz-Martinez's vehicle, Trooper Chivers observed motor-vehicle violations and stopped Cruz-Martinez based on failure to maintain lane. Trooper Clachrie was nearby and arrived at the scene shortly after Cruz-Martinez was stopped.

Trooper Clachrie went to the pickup truck and engaged Cruz-Martinez in general conversation, i.e., where he was coming from

and what he was doing. Cruz-Martinez said he was coming from Providence and driving to Hartford and that he was going to a restaurant for dinner. Cruz-Martinez could not give Trooper Clachrie the name of the restaurant, although Cruz-Martinez said that he believed it was on Franklin Avenue. Cruz-Martinez also said he was not going to dinner with anyone else. Trooper Clachrie thought it was suspicious that Cruz-Martinez was going all the way to Hartford from Providence for dinner alone at a restaurant he did not know the name of.

Within three to five minutes after the stop, TFO Devanney arrived on the scene with a certified narcotics-detection canine, Canine Abby. TFO Devanney had Canine Abby search the exterior of the pickup truck, starting at the front driver's side headlight, and then going along the driver's side, around the rear of the vehicle, and back up the passenger side. The driver's side window was down, and when they got to the driver's compartment, Canine Abby sat and indicated on the door handle. Based on his experience with Canine Abby, TFO Devanney knew that she was informing him that there was an odor of narcotics on the door handle, which is common when someone who has handled narcotics touches a door handle. TFO Devanney and Canine Abby then continued along the driver's side. When they got to the bed of the pickup truck, Canine Abby alerted to it. She then jumped onto the bed of the truck and put her nose into a pallet, under

which was the garbage bag that investigators had seen Cruz-Martinez place there. The officers removed the garbage bag from the bed of the pickup truck, and after Canine Abby came down from the bed of the pickup truck, she alerted to the garbage bag. The officers then searched the garbage bag and found what turned out to be two kilograms of heroin.

II. Discussion

Cruz-Martinez moves to suppress all evidence seized as a result of the stop and search of his vehicle. His motion is being denied because the law enforcement officers had probable cause to stop his vehicle and then search the pickup truck, and in any event, they were justified in acting on reasonable suspicion that Cruz-Martinez was committing a crime.

Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." Brinegar v. United States, 338 U.S. 160, 175-76 (1949) (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)). "[P]robable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." Illinois v. Gates, 462 U.S. 213, 245 n.13 (1983).

"The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause." Ornelas v. United States, 517 U.S. 690, 696 (1996). "[T]he court must evaluate those circumstances 'through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training.'" United States v. Bayless, 201 F.3d 116, 133 (2d Cir. 2000) (quoting United States v. Oates, 560 F.2d 45, 61 (2d Cir. 1977)). "Under the collective or imputed knowledge doctrine, an arrest or search is permissible where the actual arresting or searching officer lacks the specific information to form the basis for probable cause or reasonable suspicion but sufficient information to justify the arrest or search was known by other law enforcement officials initiating or involved with the investigation." United States v. Colon, 250 F.3d 130, 135 (2d Cir. 2001); see also United States v. Cruz, 834 F.2d 47, 51 (2d Cir. 1987) (probable cause to arrest "can be based on the collective knowledge of all officers involved in the surveillance efforts because the various officers . . . were in communication with each other").

At the time the Connecticut State Troopers stopped Cruz-Martinez's pickup truck on Interstate 95, there was probable cause to believe that he was in possession of heroin with the intention of selling it to the confidential source. Task Force members had read text messages between the confidential source and Cruz-Martinez in which those two individuals made arrangements for Cruz-Martinez to sell a sample of heroin to the confidential source on December 9th. They then observed on December 9th as that transaction took place at the restaurant in Hartford. They witnessed Cruz-Martinez arrive in the Chevy S-10 pickup truck, meet with the confidential source in the restaurant, and then retrieve the sample of the heroin from the pickup truck and deliver it to the confidential source. Then, on December 13th, Task Force members monitored the confidential source's communications with Cruz-Martinez about a two-kilogram transaction. Task Force members followed Cruz-Martinez as he traveled to the Chevy S-10 pickup truck he had used for the transaction on December 9th, met and drove around in the pickup truck with an individual, got confirmation from the confidential source that a two-kilogram transaction was acceptable, and then put on the bed of the pickup truck a black plastic garbage bag that was large enough to contain two kilograms of heroin. Based on what Cruz-Martinez told the confidential source shortly before he placed the garbage bag on the bed of the pickup truck,

it was apparent that Cruz-Martinez was on his way to the restaurant in Hartford to sell two kilograms of heroin to the confidential source. Probable cause requires only a probability or substantial chance of criminal activity, and not an actual showing of such activity, and the circumstantial evidence here was so compelling that it far exceeded the threshold for probable cause.

Police officers are permitted to "stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." United States v. Sokolow, 490 U.S. 1, 7 (1989). "Investigative methods reasonable under Terry are those 'necessary to effectuate the purpose of the stop . . . [and] should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.'" United States v. Gori, 230 F.3d 44, 56 (2d Cir. 2000) (quoting Florida v. Royer, 460 U.S. 491, 500-01 (1983)) (alterations in original). An investigative stop complies with the requirements of the Fourth Amendment when "'specific articulable facts, together with rational inferences from those facts, [] reasonably warrant suspicion' that the individual stopped was engaged in criminal activity." United States v. Alexander, 907 F.2d 269, 272 (2d Cir. 1990) (quoting United

States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975)) (alteration in original). "Reasonable suspicion is not a high threshold."

United States v. Lawes, 292 F.3d 123, 127 (2d Cir. 2002).

Reasonable suspicion entails "some minimal level of objective justification" for making the stop, Sokolow, 490 U.S. at 7 (quoting INS v. Delgado, 466 U.S. 210, 217 (1984)), but requires "considerably less than proof of wrongdoing by preponderance of the evidence" and "obviously less" than probable cause, id.

Based on the facts and circumstances summarized above in the discussion with respect to probable cause, the members of the Task Force had more than "reasonable and articulable suspicion" to conduct an investigative stop of the Cruz-Martinez's truck.

Once Cruz-Martinez's pickup truck was stopped, TFO Devanney and Canine Abby were on the scene in only a few minutes. Having Canine Abby walk around the pickup truck was the least intrusive means reasonably available to verify or dispel the suspicion that Cruz-Martinez was at that time in possession of heroin with the intention to distribute it. It took very little time to verify that suspicion. Once Canine Abby alerted to the garbage bag in the bed of the pickup truck and then again alerted to that bag once it had been removed from the truck and placed on the ground and the officers observed its contents, there was probable cause to arrest Cruz-Martinez.

Cruz-Martinez argues that there was insufficient corroboration of the information provided by the confidential source to the members of the Task Force. However, members of the Task Force had viewed the text messages themselves, they had set up and witnessed the controlled buy of the sample of heroin, and they tested the sample. Task Force members had been informed by the confidential source that Cruz-Martinez was going to sell him/her two kilograms of heroin, and shortly thereafter the members of the Task Force observed Cruz-Martinez placing the garbage bag in the bed of the same pickup truck he had used during the controlled buy. The confidential source informed the members of the Task Force that Cruz-Martinez had stated that he was about one-and-a-half hours away from the restaurant in Hartford, and based on their personal observation of Cruz-Martinez, the members of the Task Force knew that was true. Moreover, when Cruz-Martinez left Providence he headed in the direction of Hartford.

Cruz-Martinez also argues that the members of the Task Force did not have probable cause because they stopped Cruz-Martinez prematurely. He maintains that because Cruz-Martinez was so close to Rhode Island and so far away from Hartford when he was stopped (i.e., near Exit 91 on Interstate 95), there was no basis for concluding that Cruz-Martinez was headed to Hartford because there are a number of exits on Interstate 95

and Cruz-Martinez could have been intending to take any of them and go somewhere other than Hartford. Cruz-Martinez maintains that it would not have been premature to stop him when he was coming off the exit in the city of Hartford. However, the question is not whether there is absolute certainty that Cruz-Martinez was headed to the restaurant in Hartford, but rather whether there were specific facts that supported a rational inference that he was. Such facts are present here.

III. CONCLUSION

For the reasons set forth above, Defendant's Motion to Suppress Evidence Obtained in Violation of the Fourth Amendment (ECF No. 29) is hereby DENIED.

It is so ordered.

Dated this 30th day of August 2019, at Hartford,
Connecticut.

/s/AWT

Alvin W. Thompson
United States District Judge